

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

HINDU AMERICAN FOUNDATION,
INC.,

Plaintiff,

v.

KEVIN KISH,

Defendant.

No. 2:22-cv-01656-DAD-JDP

ORDER GRANTING DEFENDANT'S
MOTION TO DISMISS

(Doc. No. 8)

This matter is before the court on defendant's motion to dismiss under Federal Rule of Civil Procedure 12(b)(1) on the grounds that plaintiff lacks standing and under Federal Rule of Civil Procedure 12(b)(6) on the grounds that plaintiff's complaint fails to state a claim upon which relief can be granted. (Doc. No. 8.) On August 24, 2023, the court took the matter under submission pursuant to Local Rule 230(g). (Doc. No. 19.) For the reasons explained below, the court will grant defendant's motion to dismiss, in part.

BACKGROUND

On September 20, 2022, plaintiff Hindu American Foundation, Inc. initiated this action seeking declaratory and injunctive relief against Kevin Kish, in his official capacity as the director of the California Civil Rights Department ("Department"), for allegedly violating the constitutional rights of all Hindu Americans. (Doc. No. 1.)

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1 In its complaint, plaintiff alleges as follows. The Department is pursuing enforcement
 2 actions brought under the California Fair Employment and Housing Act (“FEHA”) that are
 3 wrongly asserting “that a caste system and caste-based discrimination are integral parts of Hindu
 4 teachings and practices.” (*Id.* at 2.) In those enforcement actions, the Department purportedly
 5 “alleges that a caste system is ‘a strict Hindu social and religious hierarchy,’ which requires
 6 discrimination by ‘social custom and legal mandate’ and that Hindu Americans, therefore, adhere
 7 to this strict and discriminatory religious hierarchy in violation of the FEHA.” (*Id.*) According to
 8 plaintiff, it is “the largest and most respected Hindu educational and advocacy institution in North
 9 America” and it has consistently maintained throughout its history that a caste system or
 10 discrimination based on caste is not a legitimate part of Hindu beliefs, teachings, or practices;
 11 vehemently opposes all types of discrimination; and “takes great exception to the State of
 12 California defaming and demeaning all of Hinduism by attempting to conflate a discriminatory
 13 caste system with the Hindu religion.” (*Id.*) Plaintiff specifically identifies only one enforcement
 14 action that the Department initiated in the Santa Clara County Superior Court.¹ (*Id.* at ¶ 9.)

15 Plaintiff also alleges that through its enforcement action the Department is seeking to
 16 “adopt a legal definition of Hinduism that incorrectly includes caste, a caste system and caste-
 17 based discrimination.” (*Id.* at ¶ 13.) In doing so, the Department is “attempting to define
 18 Hinduism against the beliefs of an overwhelming number of its own adherents” and “in direct
 19 violation of the constitutional right[s] . . . of all Hindu Americans.” (*Id.* at ¶¶ 14–15.) In fact,
 20 according to plaintiff, by wrongly seeking to define Hinduism to include a caste system, the
 21 Department is encouraging discrimination on the basis of caste because employers could be
 22 required, in accordance with state and federal law, to accommodate a religious belief that
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24 ¹ Plaintiff purports to attach a copy of the Department’s complaint filed in the Santa Clara
 25 County Superior Court as Exhibit A to its complaint in this action, but the Exhibit A attached is
 26 actually a complaint filed by the Department in the United States District Court for the Northern
 27 District of California. (Doc. Nos. 1 at ¶ 9; 1-1.) The attached federal complaint was brought
 28 against Cisco Systems, Inc. (“Cisco”) as well as two individual supervisors and alleges unlawful
 employment practices on the bases of religion, ancestry, national origin/ethnicity, and race/color.
 (Doc. No. 1-1 at ¶ 1.) The correct complaint that was filed in Santa Clara County Superior Court
 is included in defendant’s unopposed request for judicial notice, addressed below. (Doc. No. 10.)

embraces caste discrimination. (*Id.* at ¶¶ 16–22.) The result, plaintiff alleges, is that employers “might arguably be required to accommodate” employee requests to avoid working with, being supervised by, or supervising a person perceived to be of the “wrong” caste. (*Id.* at ¶¶ 21–22.) Thus, according to plaintiff, by “wrongly tying Hindu beliefs and practices to the abhorrent practice of caste-discrimination” the Department is undermining the laudable goal of stopping caste-based discrimination while also violating the constitutional rights of all Hindu Americans. (*Id.* at 3.)

Based on these allegations, plaintiff brings three claims against defendant under 42 U.S.C. § 1983 for: (1) violation of the Free Exercise Clause of the First Amendment; (2) denial of procedural due process (without reference to a provision of the U.S. Constitution); and (3) violation of the Equal Protection Clause of the Fourteenth Amendment. (Doc. No. 1 at ¶¶ 23–47.) As to each of its three claims, plaintiff alleges that it has “associational standing to bring this claim on behalf of its Hindu American members.” (*Id.* at ¶¶ 24, 32, 43.) In terms of relief, plaintiff seeks an order (i) declaring that the Department’s actions, as described in its complaint, violate the First Amendment, due process, and equal protection rights of Hindu Americans, and (ii) enjoining the Department from: (a) “engaging in any act or practice that seeks to define Hinduism as including a caste system or any other belief or practice”; (b) “bringing any religious discrimination action based on the premise that Hindu belief and practice includes a caste system”; and (c) “ascribing religious or moral beliefs or practices to persons or groups who expressly disclaim any such beliefs or practices.” (*Id.* at 12.)

On February 2, 2023, defendant filed a motion to dismiss plaintiff’s complaint pursuant to Rules 12(b)(1) and 12(b)(6) and a request for judicial notice. (Doc. Nos. 8, 10.) On June 29, 2023, plaintiff filed its opposition to defendant’s pending motion and its own request for judicial notice. (Doc. No. 15, 16.) Defendant filed his reply on August 4, 2023. (Doc. No. 18.)

REQUESTS FOR JUDICIAL NOTICE

Both defendant and plaintiff filed unopposed requests for judicial notice in support of their motion to dismiss and opposition brief, respectively. (Doc. Nos. 10, 16.)

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1 “Judicial notice under Rule 201 permits a court to notice an adjudicative fact if it is ‘not
2 subject to reasonable dispute.’” *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 999 (9th
3 Cir. 2018) (quoting Fed. R. Evid. 201(b)). “A fact is ‘not subject to reasonable dispute’ if it is
4 ‘generally known,’ or ‘can be accurately and readily determined from sources whose accuracy
5 cannot reasonably be questioned.’” *Id.* (quoting Fed. R. Evid. 201(b)(1)–(2)). The court “must
6 take judicial notice if a party requests it and the court is supplied with the necessary information.”
7 Fed. R. Evid. 201(c)(2).

8 In defendant’s unopposed request for judicial notice, he requests that the court take notice
9 of the following five documents: (1) the Department’s state court complaint against Cisco
10 Systems, Inc., and of its two supervisors (collectively “Cisco”), which was filed in the Santa
11 Clara County Superior Court on October 16, 2020 (*CRD v. Cisco Systems, Inc., et al.*, Case No.
12 20-cv-372366) (“Santa Clara action”), and is referenced in plaintiff’s complaint (Doc. No. 1 at ¶
13 9); (2) plaintiff’s motion to intervene and its proposed complaint in intervention, which were filed
14 in the Santa Clara action on January 7, 2021; (3) plaintiff’s filed IRS Form 990 for Tax Year 2019
15 as published by the IRS (retrieved from the IRS’s website on January 16, 2023); (4) plaintiff’s
16 filed IRS Form 990 for Tax Year 2020 as published by the IRS (retrieved from the IRS’s website
17 on January 16, 2023); and (5) plaintiff’s filed IRS Form 990 for Tax Year 2021 as published by
18 the IRS (retrieved from the IRS’s website on January 16, 2023). (Doc. No. 10.)

19 In plaintiff’s unopposed request for judicial notice, it requests that the court take notice of
20 the following three documents: (1) non-party Catholic League’s filed IRS Form 990 for Tax Year
21 2019 as published by the IRS (retrieved from the IRS’s website on June 28, 2023); (2) the IRS’s
22 instructions for Form 990 Return of Organization Exempt Form Income Tax for Tax Year 2019,
23 which are posted on the IRS’s website (retrieved from the IRS’s website on June 28, 2023); and
24 (3) the IRS’s instructions for Form 990 Return of Organization Exempt Form Income Tax for Tax
25 Year 2022, which are posted on the IRS’s website (retrieved from the IRS’s website on June 28,
26 2023). (Doc. No. 16.)

27 The court will grant both defendant’s and plaintiff’s unopposed requests to notice all of
28 the documents described above, which are properly the subject of judicial notice as public

1 records, court documents, and government documents obtained from the IRS’s official public
 2 website. *See Lemoon v. Cal. Forensic Med. Grp., Inc.*, 575 F. Supp. 3d 1212, 1230 (N.D. Cal.
 3 2021) (“[A] court may judicially notice court documents that are already in the public record or
 4 have been filed in other courts.”) (citing *Holder v. Holder*, 305 F.3d 854, 866 (9th Cir. 2002));
 5 *Full Circle of Living & Dying v. Sanchez*, No. 2:20-cv-01306-KJM-KJN, 2023 WL 373681, at *2
 6 (E.D. Cal. Jan. 24, 2023) (taking judicial notice of handbook obtained from a state government
 7 website because it fell “within the realm of public records and government documents available
 8 from reliable sources on the Internet, which includes websites run by governmental agencies”)
 9 (citations, internal quotation marks, and brackets omitted); *Africare, Inc. v. Xerox Complete*
 10 *Document Sols. Maryland, LLC*, 436 F. Supp. 3d 17, 45 n.21 (D.D.C. 2020) (taking judicial
 11 notice of revenue statements from a party’s IRS Tax Form 990).

12 In addition to its request for judicial notice, defendant contends that the complaint filed in
 13 the Santa Clara action should be considered as incorporated by reference into plaintiff’s
 14 complaint. (Doc. No. 10 at 3.) “The doctrine of incorporation by reference is distinct from
 15 judicial notice.” *Al -Ahmed v. Twitter, Inc.*, 603 F. Supp. 3d 857, 866 (N.D. Cal. 2022). “[T]he
 16 requirements for the documents that are relied on by the complaint to be incorporated is that: ‘(1)
 17 the complaint refers to the document; (2) the document is central to the plaintiff’s claim; and (3)
 18 no party questions the authenticity of the copy attached to the 12(b)(6) motion.’” *Id.* (quoting
 19 *Marder v. Lopez*, 450 F.3d 445, 448 (9th Cir. 2006)). Documents that are incorporated by
 20 reference “may be considered as ‘part of the complaint,’ without converting the Rule 12(b)(6)
 21 motion into one for summary judgment . . . [and] may be assumed to be true for purposes of
 22 deciding a Rule 12(b)(6) motion.” *Id.* (quoting *United States v. Ritchie*, 342 F.3d 903, 908 (9th
 23 Cir. 2003)).

24 Here, the state court complaint filed in the Santa Clara action is directly referenced in
 25 plaintiff’s complaint by its case number; it is central to plaintiff’s action because the allegations
 26 contained within that state court complaint purportedly caused plaintiff to initiate the present
 27 action; and defendant’s request to deem that document incorporated by reference into plaintiff’s
 28 complaint is unopposed, nor is there any other reason to doubt the authenticity of the publicly

1 filed court document. (Doc. Nos. 1 at ¶¶ 9–10; 10-1 at 5–23.) Accordingly, defendant’s request
 2 is granted. The court will consider the complaint filed by the Department in the Santa Clara
 3 action as incorporated by reference into plaintiff’s complaint filed in this action.

4 **LEGAL STANDARD²**

5 “Federal courts are courts of limited jurisdiction and are presumptively without
 6 jurisdiction over civil actions.” *Howard Jarvis Taxpayers Ass’n v. Cal. Secure Choice Ret. Sav.*
 7 *Program*, 443 F. Supp. 3d 1152, 1156 (E.D. Cal. 2020) (citing *Kokkonen v. Guardian Life Ins.*
 8 *Co.*, 511 U.S. 375, 377 (1994)), *aff’d*, 997 F.3d 848 (9th Cir. 2021). Federal courts “possess only
 9 that power authorized by Constitution and statute, which is not to be expanded by judicial
 10 decree.” *Kokkonen*, 511 U.S. at 377 (internal citations omitted). Subject matter jurisdiction is
 11 required; it cannot be forfeited or waived. *Howard Jarvis Taxpayers Ass’n*, 443 F. Supp. 3d at
 12 1156. Indeed, “[i]f the court determines at any time that it lacks subject-matter jurisdiction, the
 13 court must dismiss the action.” Fed. R. Civ. P. 12(h)(3).

14 Rule 12(b)(1) of the Federal Rules of Civil Procedure provides that a party may
 15 “challenge a federal court’s jurisdiction over the subject matter of the complaint.” *Nat’l Photo*
 16 *Grp., LLC v. Allvoices, Inc.*, No. 3:13-cv-03627-JSC, 2014 WL 280391, at *1 (N.D. Cal. Jan. 24,
 17 2014). “A Rule 12(b)(1) jurisdictional attack may be facial or factual. In a facial attack, the
 18 challenger asserts that the allegations contained in a complaint are insufficient on their face to
 19 invoke federal jurisdiction.” *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004)
 20 (citing *White v. Lee*, 227 F.3d 1214, 1242 (9th Cir. 2000)). A party making a facial attack does
 21 not submit supporting evidence with the motion because jurisdiction is challenged based solely on
 22 the pleadings. *Howard Jarvis Taxpayers Ass’n*, 443 F. Supp. 3d at 1156; *see also Diva*
 23 *Limousine, Ltd. v. Uber Techs., Inc.*, 392 F. Supp. 3d 1074, 1084 (N.D. Cal. 2019) (“[C]ourts do
 24 not consider evidence outside the pleadings when deciding a facial attack.”) (citation omitted).
 25 Important for purposes of resolving the pending motion, it has been recognized that “[t]he district
 26

27 ² This order does not address the legal standard governing consideration of motions to dismiss
 28 brought under Rule 12(b)(6) because, as explained below, the court does not reach defendant’s
 12(b)(6) arguments.

1 court resolves a facial attack as it would a motion to dismiss under Rule 12(b)(6): [a]ccepting the
2 plaintiff's allegations as true and drawing all reasonable inferences in the plaintiff's favor, the
3 court determines whether the allegations are sufficient as a legal matter to invoke the court's
4 jurisdiction." *Leite v. Crane Co.*, 749 F.3d 1117, 1121 (9th Cir. 2014). However, the court need
5 not assume the truth of legal conclusions cast in the form of factual allegations. *Warren v. Fox*
6 *Family Worldwide, Inc.*, 328 F.3d 1136, 1139 (9th Cir. 2003).

7 "By contrast, in a factual attack, the challenger disputes the truth of the allegations that, by
8 themselves, would otherwise invoke federal jurisdiction." *Safe Air for Everyone*, 373 F.3d at
9 1039. In ruling on a party's factual attack, district courts "may review evidence beyond the
10 complaint without converting the motion to dismiss into a motion for summary judgment." *Id.*
11 The movant may "rely on affidavits or any other evidence properly before the court," and the
12 party opposing the motion must then "present affidavits or any other evidence necessary to satisfy
13 its burden of establishing that the court, in fact, possesses subject matter jurisdiction." *St. Clair v.*
14 *City of Chico*, 880 F.2d 199, 201 (9th Cir. 1989) (citing *Thornhill Publ'g Co. v. Gen. Tel. & Elec.*
15 *Corp.*, 594 F.2d 730, 733 (9th Cir. 1979)).

16 Here, the court construes defendant's motion as posing a facial attack under Rule 12(b)(1)
17 because in it defendant contends that the allegations of plaintiff's complaint are insufficient for
18 purposes of Article III standing. (Doc. No. 8 at 15–24.) Although defendant does rely on
19 documents outside of the complaint, the only such documents are the subject of defendant's
20 request for judicial notice (Doc. No. 10), which are ordinarily considered by the court when it is
21 analyzing the face of the complaint. *See Carpenter v. OneWest Bank, FSB*, No. 12-cv-00895-
22 MMM-OP, 2012 WL 13012420, at *2 (C.D. Cal. Apr. 25, 2012) ("Even when deciding a facial
23 attack, however, a court can look beyond the complaint to consider documents that are proper
24 subjects of judicial notice.") (collecting cases); *see also Leite*, 749 F.3d at 1121 ("The district
25 court resolves a facial attack as it would a motion to dismiss under Rule 12(b)(6)."); *Skilstaf, Inc.*
26 *v. CVS Caremark Corp.*, 669 F.3d 1005, 1016 n.9 (9th Cir. 2012) (explaining that matters
27 properly the subject of judicial notice may be considered along with the complaint when deciding
28 a Rule 12(b)(6) motion).

ANALYSIS

As noted, defendant brings the pending motion to dismiss pursuant to Rules 12(b)(1) and 12(b)(6), arguing that plaintiff’s entire complaint is subject to dismissal. (Doc. No. 8 at 10–11.) Because the portion of defendant’s motion to dismiss brought under Rule 12(b)(1) raises questions with respect to this court’s subject matter jurisdiction over this action, the court will first address that aspect of defendant’s motion. *See* Fed. R. Civ. P. 12(h)(3) (“If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.”).

A. Motion to Dismiss Pursuant to Rule 12(b)(1): Article III Standing

“[T]hose who seek to invoke the jurisdiction of the federal courts must satisfy the threshold requirement imposed by Article III of the Constitution by alleging an actual case or controversy.” *City of Los Angeles v. Lyons*, 461 U.S. 95, 101 (1983); *see also Matter of E. Coast Foods, Inc.*, 66 F.4th 1214, 1218 (9th Cir. 2023) (explaining that “standing is an ‘essential and unchanging’ requirement . . . [thus] a party must establish an Article III case or controversy before we exert subject matter jurisdiction”) (citations omitted); *City of Oakland v. Lynch*, 798 F.3d 1159, 1163 (9th Cir. 2015) (“A suit brought by a plaintiff without Article III standing is not a ‘case or controversy,’ and an Article III federal court therefore lacks subject matter jurisdiction over the suit.”) (quoting *Cetacean Cmty. v. Bush*, 386 F.3d 1169, 1174 (9th Cir. 2004)). An actual case or controversy will be held to exist when a plaintiff establishes standing. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992).

Standing, in turn, “requires that (1) the plaintiff suffered an injury in fact, i.e., one that is sufficiently ‘concrete and particularized’ and ‘actual or imminent, not conjectural or hypothetical,’ (2) the injury is ‘fairly traceable’ to the challenged conduct, and (3) the injury is ‘likely’ to be ‘redressed by a favorable decision.’” *Bates v. United Parcel Serv., Inc.*, 511 F.3d 974, 985 (9th Cir. 2007) (*en banc*) (citing *Lujan*, 504 U.S. at 560–61). “Standing must be shown with respect to each form of relief sought, whether it be injunctive relief, damages or civil penalties.” *Id.* “[T]o establish standing to pursue injunctive relief . . . [plaintiff] must demonstrate a real and immediate threat of repeated injury in the future.” *Chapman v. Pier 1*

1 *Imports (U.S.) Inc.*, 631 F.3d 939, 946 (9th Cir. 2011) (citation and internal quotations omitted).

2 “To determine whether organizational standing requirements have been satisfied, [courts]
3 ‘conduct the same inquiry as in the case of an individual: Has the plaintiff alleged such a
4 personal stake in the outcome of the controversy as to warrant his invocation of federal-court
5 jurisdiction?’” *E. Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 662 (9th Cir. 2021) (quoting
6 *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 378–79 (1982)). “[W]here the plaintiff is an
7 organization, the standing requirements of Article III can be satisfied in two ways. Either the
8 organization can claim that it suffered an injury in its own right or, alternatively, it can assert
9 ‘standing solely as the representative of its members.’” *Students for Fair Admissions, Inc. v.*
10 *President & Fellows of Harvard Coll.*, ___ U.S. ___, 143 S. Ct. 2141, 2157 (2023) (citation
11 omitted); *see also E. Bay Sanctuary Covenant*, 993 F.3d at 662 (“Organizations can assert
12 standing on behalf of their own members, or in their own right.”) (internal citations omitted);
13 *Rodriguez v. City of San Jose*, 930 F.3d 1123, 1134 (9th Cir. 2019) (“[A]bsent a member with
14 standing, . . . an organizational plaintiff ‘may have standing in its own right to seek judicial relief
15 from injury to itself and to vindicate whatever rights and immunities the association itself may
16 enjoy.’”) (citation omitted).

17 Here, plaintiff alleges in its complaint that it has organizational standing on behalf of its
18 members and argues in its opposition to the pending motion that it also has standing to bring this
19 action based on an injury to itself. (Doc. Nos. 1 at ¶¶ 24, 32, 43; 15 at 7–10.) Accordingly, the
20 court will address both of plaintiff’s theories as to its standing to bring this action.

21 1. Whether Plaintiff Has Organizational Standing on Behalf of its Members

22 To invoke organizational standing on behalf of its members, the plaintiff must allege facts
23 demonstrating that: “(1) its members would otherwise have standing to sue in their own right; (2)
24 the interests it seeks to protect are germane to the organization’s purpose; and (3) neither the
25 claim asserted nor the relief requested requires the participation of individual members in the
26 lawsuit.” *Am. Unites for Kids v. Rousseau*, 985 F.3d 1075, 1096 (9th Cir. 2021) (citing *Hunt v.*
27 *Wash. State Apple Advert. Comm’n*, 432 U.S. 333, 343 (1977)).

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1 “Implicit in the first prong of this test is the requirement that an organization must
2 generally have ‘members’ to bring suit on their behalf.” *Or. Moms Union v. Brown*, 540 F. Supp.
3 3d 1008, 1013 (D. Or. May 20, 2021). However, a formal membership is not always required for
4 organizational standing: a plaintiff-organization that does not allow for membership may have
5 standing, “so long as ‘the organization is sufficiently identified with and subject to the influence
6 of those it seeks to represent as to have a personal stake in the outcome of the controversy.’” *Am.*
7 *Unites for Kids*, 985 F.3d at 1096 (internal citations omitted) (quoting *Or. Advoc. Ctr. v. Mink*,
8 322 F.3d 1101, 1111 (9th Cir. 2003)). “Courts look at whether the individuals the organization
9 purports to represent possess ‘the indicia of membership’ to satisfy the purposes undergirding the
10 concept of associational standing.” *Or. Moms Union*, 540 F. Supp. 3d at 1013 (quoting *Or.*
11 *Advoc. Ctr.*, 322 F.3d at 1111). For example, the Ninth Circuit has found that a non-membership
12 organization had standing because it “serve[d] a specialized segment of Oregon’s community:
13 the disabled in general, including the mentally ill and, more specifically, incapacitated criminal
14 defendants. Those groups [were] the primary beneficiaries of [plaintiff’s] activities, ‘including
15 the prosecution of this kind of litigation,’” which sought to expedite the transfer of mentally
16 incapacitated defendants from jails to state hospitals for evaluation and treatment. *Or. Advoc.*
17 *Ctr.*, 322 F.3d at 1111–12 (quoting *Hunt*, 432 U.S. at 344).

18 In defendant’s pending motion, he argues that plaintiff lacks standing because it has no
19 members, pointing to a dearth of allegations discussing its members in the complaint and
20 plaintiff’s tax records that have been judicially noticed. (Doc. No. 8 at 16–17.) In its opposition,
21 plaintiff argues that formal membership is not required for standing and that it “represents the
22 interest of Hindu Americans throughout the United States, including those working at Cisco” as
23 well as its “board members, employees, leadership and advisory council members, donors,
24 newsletter readers and scholars residing in California. . . .” (Doc. No. 15 at 10–12.) In his reply,
25 defendant concedes that the Ninth Circuit has found organizational standing in cases even where
26 the organization in question had no formal membership, but contends that plaintiff has not alleged
27 facts indicating that it is “sufficiently identified with and subject to the influence of” a non-

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1 member constituency, nor has it even identified an individual belonging to that constituency.
2 (Doc. No. 18 at 8–9.)

3 In its complaint, plaintiff alleges that it is “the largest and most respected Hindu
4 educational and advocacy institution in North America,” “acts to protect the religious freedoms of
5 Hindu Americans, and all Americans of faith,” “is not affiliated with any other religious or
6 political organization,” and “works with a wide range of people and groups that are committed to
7 promoting dignity, mutual respect, and pluralism, working across all sampradaya (Hindu religious
8 traditions) regardless of race, color, national origin, citizenship, ancestry, gender, sexual
9 orientation, age and/or disability.” (Doc. No. 1 at 2, ¶ 5.) In this regard, plaintiff appears to
10 allege that it represents “all Hindu Americans” and “all Americans of faith” (*id.* at 3, ¶ 15), yet
11 there are no allegations in the complaint indicating that plaintiff represents Hindus (or anyone
12 else) employed at Cisco, nor are there any allegations describing or identifying plaintiff’s “board
13 members, employees, leadership and advisory council members, donors, newsletter readers and
14 scholars residing in California.”³

15 Due to these pleading deficiencies, the court concludes that plaintiff’s complaint fails to
16 allege facts that, if proven, would show that plaintiff is “sufficiently identified with and subject to
17 the influence” of the individuals it seeks to represent in this lawsuit. *Or. Advoc. Ctr.*, 322 F.3d at
18 1112. Indeed, it is unclear even which specific individuals plaintiff seeks to represent in this
19 action because its complaint merely alleges that it seeks to protect the constitutional rights of “all
20 Hindu Americans” and “all Americans of faith.” However, “all Hindu Americans” or “all
21 Americans of faith” would amount to a constituency that is significantly larger and more diffuse
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23 ³ The board members, employees, advisory council members, donors, and newsletter-readers that
24 plaintiff seeks to represent are mentioned in the declaration of Suhag A. Shukla, a co-founder,
25 and the executive director of plaintiff, that was attached to plaintiff’s opposition brief. (Doc. No.
26 15-1.) However, because this Rule 12(b)(1) motion is a facial attack on the pleadings, that
27 declaration must be disregarded. *See Timboe v. Clark*, No. 3:20-cv-08719-WHO, 2022 WL
28 991721, at *2 (N.D. Cal. Mar. 31, 2022) (disregarding a declaration attached to an opposition
brief “on a 12(b)(6) motion because it is not part of the complaint or subject to judicial notice”).
Even if such categories of individuals were described and identified in plaintiff’s complaint, the
court remains somewhat skeptical that such allegations would remedy the remainder of the
pleading deficiencies identified below.

1 than those found appropriate for purposes of organizational standing in the cases relied upon by
2 plaintiff. *See Or. Advoc. Ctr.*, 322 F.3d at 1111–12 (the plaintiff’s constituency defined as
3 mentally incapacitated criminal defendants in Oregon); *Am. Unites for Kids*, 985 F.3d at 1096–97
4 (the plaintiff’s constituency defined as public employees, in particular teachers, at the Malibu
5 campuses of a school district); *Cath. League for Religious & C.R. v. City & Cnty. of San*
6 *Francisco*, 624 F.3d 1043, 1048, 1063–64 (9th Cir. 2010) (*en banc*) (“*Catholic League*”) (the
7 plaintiff’s constituency defined as being devout Catholics in San Francisco, which purportedly
8 was comprised of 6,000 individuals).

9 Moreover, even though plaintiff alleges it is “the largest and most respected Hindu
10 educational and advocacy institution in North America,” it does not allege what activities, if any,
11 it engages in that relate to “all Hindu Americans,” how it is funded, what interaction it has with
12 the Hindu American community, or any facts indicating that it is “sufficiently identified with and
13 subject to the influence” of all adherents of an entire faith such that it plausibly could represent
14 them in this lawsuit. *See Meister v. City of Hawthorne*, No. 14-cv-01096-MWF-SH, 2014 WL
15 3040175, at *8–9 (C.D. Cal. May 13, 2014) (dismissing an action brought by the advocacy and
16 service organization “Greater Los Angeles Agency on Deafness, Inc.” (“GLAD”) for lack of
17 standing because its complaint alleged “only that GLAD seeks to represent deaf and hearing-
18 impaired persons, but not that any relevant persons have the requisite indicia of membership to
19 confer standing on GLAD”); *cf. Or. Advoc. Ctr.*, 322 F.3d at 1111–12 (holding that the plaintiff-
20 organization created and primarily funded by federal statute to advance the rights of individuals
21 with mental health disabilities could be considered to represent the mentally incapacitated
22 criminal defendants in Oregon whose constitutional rights the plaintiff-organization sought to
23 vindicate). Relatedly, plaintiff also has failed to explain how “all Hindu Americans”—or
24 whatever constituency it seeks to represent—constitute a “specialized segment” of the community
25 affected by the complaint filed in the Santa Clara action, nor does plaintiff’s complaint identify
26 how its purported constituency would be the “primary beneficiaries” of this lawsuit. *Cf. Am.*
27 *Unites for Kids*, 985 F.3d at 1097 (holding that the plaintiff-organization had standing when it
28 served “a ‘specialized segment’ of the community: public employees concerned about exposure

1 to environmental risk at work” and teachers working on defendants’ school campuses “were the
 2 ‘primary beneficiaries’ of [the plaintiff-organization’s] activities,” including its lawsuit brought
 3 against the defendant school district for environmental contamination on its campuses). Without
 4 factual allegations connecting the plaintiff organization with the particular constituency that it
 5 seeks to represent here, the court cannot plausibly infer that plaintiff is “sufficiently identified
 6 with and subject to the influence of” “all Hindu Americans.”

7 More importantly, even if the court were to assume plaintiff could assert claims on behalf
 8 of “all Hindu Americans,” plaintiff must still allege facts suggesting that a member of that
 9 constituency “suffers an injury-in-fact that is traceable to the defendant and likely to be redressed
 10 by a favorable decision.” *Associated Gen. Contractors of Am., San Diego Chapter, Inc. v. Cal.*
 11 *Dep’t of Transp.*, 713 F.3d 1187, 1194 (9th Cir. 2013); *see also Summers v. Earth Island Inst.*,
 12 555 U.S. 488, 498 (2009) (explaining that “the law of organizational standing . . . [has] required
 13 plaintiff-organizations to make specific allegations establishing that at least one identified
 14 member had suffered or would suffer harm”). “To establish injury in fact, a plaintiff must show
 15 that he or she suffered ‘an invasion of a legally protected interest’ that is ‘concrete and
 16 particularized’ and ‘actual or imminent, not conjectural or hypothetical.’” *Spokeo, Inc. v. Robins*,
 17 578 U.S. 330, 339 (2016). The “threatened injury must be *certainly impending* to constitute
 18 injury in fact, and [] allegations of *possible* future injury are not sufficient.” *Clapper v. Amnesty*
 19 *Int’l USA*, 568 U.S. 398, 409 (2013) (internal quotation marks and brackets omitted) (quoting
 20 *Whitmore v. Arkansas*, 495 U.S. 149, 158 (1990)).

21 Here, plaintiff’s complaint alleges that the Department has asserted in the Santa Clara
 22 action, “that a caste system and caste-based discrimination are integral parts of Hindu teachings
 23 and practices” and “the caste system [is] ‘a strict Hindu social and religious hierarchy,’ which

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requires discrimination by ‘social custom and legal mandate.’”⁴ (Doc. No. 1 at 2.) Plaintiff alleges that these assertions “wrongly [tie] Hindu beliefs and practices to the abhorrent practice of caste-discrimination,” thereby undermining the goal of ending caste-based discrimination and violating “the First Amendment rights of all Hindu-Americans,” which “can only lead to a denial of due process and equal protection to Americans based on their religious affiliation and national origin.” (*Id.*) However, as defendant correctly points out in his pending motion to dismiss, there are no factual allegations of actual or imminent harm to anyone resulting from the Department’s allegations in its state court complaint, let alone actual harm to any individuals that plaintiff seeks to represent in this action. (Doc. No. 8 at 18); *see FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 231 (1990) (“[I]t is the burden of the ‘party who seeks the exercise of jurisdiction in his favor clearly to allege facts demonstrating that he is a proper party to invoke judicial resolution of the dispute If they fail to make the necessary allegations, they have no standing.”) (internal citations, quotations, brackets omitted).

At most, plaintiff alleges a purely hypothetical theory of harm, i.e., “[b]y wrongly attempting to define Hinduism to include caste, the [Department] would actually require the very discrimination that it seeks to ban.” (Doc. No. 1 at ¶ 16.) According to plaintiff’s complaint, “employers *might arguably* be required to accommodate an employee’s request not to work with someone the employee believes to be of the ‘wrong’ caste” as a religious accommodation under state and federal law. (*Id.* at ¶ 21) (emphasis added). But the notion that the Department’s allegations in the state court complaint—a civil rights enforcement lawsuit seeking to stop and

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⁴ The portion of the complaint filed in the Santa Clara County Superior Court action that plaintiff is quoting from actually alleges as follows: “As a strict Hindu social and religious hierarchy, India’s caste system defines a person’s status based on their religion, ancestry, national origin/ethnicity, and race/color—or the caste into which they are born—and will remain until death.” (Doc. No. 10-1 at 6) (citing Human Rights Watch & Center for Human Rights and Global Justice at New York University School of Law, *Hidden Apartheid: Caste Discrimination against India’s “Untouchables,”* at 45 (2007)). “At the bottom of the Indian hierarchy is the Dalit, typically the darkest complexion caste, who were traditionally subject to ‘untouchability’ practices which segregated them by social custom and legal mandate.” (*Id.*)

1 prevent caste-based discrimination⁵—would somehow lead other Hindu Americans to make
 2 religious accommodation requests to discriminate against co-workers based on their perceived
 3 caste and that employers might then actually grant those requests due to their interpretation of the
 4 Department’s allegations in the Santa Clara action is both highly speculative and seemingly
 5 implausible. Such an attenuated chain of events without connection to any individual facing this
 6 purported and speculative harm is plainly insufficient to establish standing. *See Summers*, 555
 7 U.S. at 495–96 (finding that a vague plan to visit unnamed National Forests “some day” did not
 8 establish “actual or imminent injury” for purposes of establishing the plaintiff’s standing to
 9 challenge government action affecting a particular forest); *Clapper*, 568 U.S. at 410–11 (finding
 10 that the “respondents’ theory of standing, which relies on a highly attenuated chain of
 11 possibilities, does not satisfy the requirement that threatened injury must be certainly
 12 impending”). Here, plaintiff’s alleged harm is also contrary to the premise of its own complaint,
 13 which is that the Department’s “depiction of the caste system . . . is not based on any universal
 14 understanding among Hindus about their own beliefs and traditions” and is contrary to the beliefs
 15 of “an overwhelming number of [Hinduism’s] own adherents.” (Doc. No. 1 at ¶¶ 12, 14.)

16 In addition, plaintiff has failed to allege any injury that is plausibly connected to the three
 17 constitutional violations that it asserts in its complaint. (Doc. No. 1 at ¶¶ 23–48); *see Or.*
 18 *Prescription Drug Monitoring Program v. U.S. Drug Enf’t Admin.*, 860 F.3d 1228, 1233 (9th Cir.
 19 2017) (“[T]he standing inquiry requires careful judicial examination of a complaint’s allegations
 20 to ascertain whether the *particular plaintiff* is entitled to an adjudication of the *particular claims*
 21 asserted.”) (emphasis in original). First, as to its free exercise claim, plaintiff fails to allege facts
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23 ⁵ The Department brought the Santa Clara action on behalf of John Doe who is “Dalit Indian, a
 24 population once known as the ‘Untouchables,’ who are the most disadvantaged people under
 25 India’s centuries-old caste system” and in it alleges that John Doe is “Dalit because of his
 26 religion, ancestry, national origin/ethnicity, and race/color.” (Doc. No. 10-1 at ¶ 1 n.2.) The
 27 Department further alleges in that case that Cisco engaged in unlawful employment practices
 28 against John Doe by subjecting him to disparate employment conditions because of his status as a
 Dalit Indian in violation of the FEHA. (*Id.* at ¶¶ 51–60.) Among other things, the suit alleges
 that Cisco reassigned Doe’s job duties and isolated him from his other colleagues, denied him a
 raise, promotion, and work opportunities, and subjected him to offensive comments, including
 publicizing his caste to co-workers. (*Id.* at ¶¶ 53, 61–71.)

1 showing how “wrongly defin[ing] Hindu Beliefs, teachings and practices to include an abhorrent
 2 practice of discrimination,” (Doc. No. 1 at ¶ 29), burdens, operates against, or otherwise infringes
 3 on the practice of Hinduism by any individual it seeks to represent in bringing this action. *See*
 4 *Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203, 222–23 & 224 n.9 (1963); *see also Kumar*
 5 *v. Koester*, ___ F. Supp.3d ___, 2023 WL 4781492, at *4 (C.D. Cal. July 25, 2023) (finding that
 6 the university professor Hindu plaintiffs lacked standing to assert a free exercise challenge to the
 7 use of “caste” in the university’s anti-discrimination policy because the plaintiffs’ “emphatically
 8 denounce[d] the caste system and reject[ed] the notion that it is part of their religion” and thus the
 9 policy did “not threaten any of Plaintiffs’ rights to practice their religion”).

10 Second, plaintiff’s mischaracterized “procedural due process” claim actually appears to be
 11 a void for vagueness challenge to the Department’s alleged “position” that seeks to “legally
 12 define Hinduism to include belief and practice in caste and a caste system” under the Fourteenth
 13 Amendment’s Due Process Clause. (Doc. No. 1 at ¶¶ 33–34.) “A plaintiff has standing to bring a
 14 pre-enforcement challenge to a vague law on due process grounds where ‘the litigant is chilled
 15 from engaging in constitutionally protected activity.’” *Montclair Police Officers’ Ass’n v. City of*
 16 *Montclair*, No. 2:12-cv-06444-PSG-PLA, 2012 WL 12888427, at *4 (C.D. Cal. Oct. 24, 2012)
 17 (quoting *Bankshot Billiards, Inc. v. City of Ocala*, 634 F.3d 1340, 1350 (11th Cir. 2011)). Here,
 18 however, plaintiff has not identified any activity that it alleges has been chilled by the
 19 Department’s allegations advanced in its state court complaint against Cisco, let alone a
 20 constitutionally protected activity.

21 Third, in regard to its equal protection claim, plaintiff’s complaint does not allege any
 22 facts plausibly suggesting that defendant “has applied the [FEHA] in a discriminatory manner
 23 against Hindu Americans” but not as to Americans of other faiths because of their faith. (Doc.
 24 No. 1 at ¶ 48.) *See Citizens for Fair Representation v. Padilla*, 815 F. App’x 120, 123 (9th Cir.
 25 2020) (holding that the plaintiff lacked standing to assert an equal protection challenge to
 26 California’s constitutional cap on the number of its state legislative districts as racially
 27 discriminatory because “they have not adequately alleged that some votes are weighted less than

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others based on race”).⁶ Nor does plaintiff allege a concrete injury stemming from the alleged discriminatory enforcement of the FEHA against Hindu Americans, except for plaintiff’s general disagreement with the Department’s allegations in the Santa Clara complaint in which it is vaguely suggested that a caste system is related to Hinduism. *See Kumar*, 2023 WL 4781492, at *3 (finding that Hindu university professors lacked standing to assert an equal protection challenge to a university’s antidiscrimination policy’s use of the term “caste” when the plaintiffs merely alleged that “the Policy impermissibly stigmatizes individuals of South Asian descent and Hindu practitioners” and that “the policy could be enforced unevenly”).

Finally, plaintiff’s reliance on the Ninth Circuit’s decision in *Catholic League* does not serve to remedy the pleading deficiencies with respect to standing identified above. 624 F.3d at 1047–48 (holding that “a Catholic civil rights organization and two devout Catholics [members] who live in San Francisco” had standing to bring an Establishment Clause challenge to a resolution adopted by the San Francisco Board of Supervisors denouncing the Archdiocese of San Francisco’s decision to not place children for adoption in homosexual households). Unlike *Catholic League*, plaintiff is not asserting an Establishment Clause challenge here, and even if it was, the specific psychological harm the plaintiffs in *Catholic League* allegedly suffered—“exclusion or denigration on a religious basis within the political community” based upon extensive and detailed factual allegations—is absent from the allegations of plaintiff’s complaint. 624 F.3d at 1052–53; *see Schempp*, 374 U.S. at 225 n.9 (“[T]he requirements for standing to challenge state action under the Establishment Clause, unlike those relating to the Free Exercise Clause, do not include proof that particular religious freedoms are infringed.”). Moreover, were plaintiff to allege a psychological injury as did the plaintiffs in *Catholic League*, it does not appear that it would be sufficiently concrete to confer standing for the type of claims that plaintiff has asserted here. *See Kumar*, 2023 WL 4781492, at *3–4 (finding Hindu professors lacked

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⁶ Citation to this unpublished Ninth Circuit opinion is appropriate pursuant to Ninth Circuit Rule 36-3(b).

standing to assert free exercise and equal protection claims where they alleged “abstract stigmatic injuries” regarding an antidiscrimination policy’s use of the term “caste”).⁷

In summary, plaintiff’s complaint fails to allege that: (i) plaintiff has any members or is “sufficiently identified with and subject to the influence of” a constituency from a specialized segment of the community that would primarily benefit from this lawsuit; and (ii) any individual members of such a constituency have suffered or will suffer an injury-in-fact. Plaintiff has thus failed to allege facts that would satisfy the first prong of organizational standing, i.e., “its members would otherwise have standing to sue in their own right.” *Am. Unites for Kids*, 985 F.3d at 1096. For this reason, the court need not address the second and third prongs that must also be satisfied to demonstrate organizational standing. *See Am. ’s Frontline Drs. v. Wilcox*, No. 21-cv-01243-JGB-KK, 2022 WL 1514038, at *6 (C.D. Cal. May 5, 2022) (“Plaintiffs fail to allege the first *Hunt* requirement, thus the Court declines to address the remaining two requirements.”).

Accordingly, defendant’s motion to dismiss the complaint for failure to adequately allege Article III standing predicated on organizational standing will be granted.

2. Whether Plaintiff Has Standing on Behalf of Itself

An organization has standing on its own behalf if it can show: (1) that the defendant’s actions have frustrated its mission; and (2) that it has spent resources counteracting that frustration of mission. *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1018 (9th Cir. 2013); *see also E. Bay Sanctuary Covenant*, 993 F.3d at 663. “Of course, organizations cannot ‘manufacture the injury by incurring litigation costs or simply choosing to spend money fixing a problem that otherwise would not affect the organization at all[.]’” *E. Bay Sanctuary Covenant*, 993 F.3d at 663 (quoting *La Asociacion de Trabajadores de Lake Forest v. Lake Forest*, 624 F.3d 1083, 1088 (9th Cir. 2010)). Rather, an organizational plaintiff must “show they ‘would have suffered some

⁷ Additionally, the undersigned observes that plaintiff’s complaint is clearly distinguishable from that before the court in *Catholic League* because the individual plaintiffs in that case were members of the organizational plaintiff and resided in the “political community” affected by the resolution that they alleged caused them religious-based exclusion and denigration within that political community. *Cf. Catholic League*, 624 F.3d at 1048.

1 other injury’ had they ‘not diverted resources to counteracting the problem.’” *Id.* at 974 (quoting
 2 *La Asociacion*, 624 F.3d at 1088). Thus, “[a]n organization may sue only if it was *forced* to
 3 choose between suffering an injury and diverting resources to counteract the injury.” *La*
 4 *Asociacion*, 624 F.3d at 1088 n.4 (emphasis added).

5 Although plaintiff’s complaint alleges it has “associational standing” to bring its claims
 6 “on behalf of its Hindu American members,” plaintiff has argued in its opposition to the pending
 7 motion to dismiss that it also has “direct standing” to bring its claims against defendant. (Doc.
 8 Nos. 1 at ¶ 43; 15 at 7–10.) As defendant correctly points out in his reply brief, however,
 9 plaintiff’s complaint is devoid of any allegations addressing how “the Department’s alleged
 10 mischaracterizations in a state court pleading against a third party” have caused or threatened
 11 injury to plaintiff’s mission or what steps it has been forced to take to avoid such harm. (Doc.
 12 No. 18 at 12); *see also La Asociacion*, 624 F.3d at 1088 n.4. In fact, plaintiff’s complaint does
 13 not even clearly allege what its mission is. (*See* Doc. No. 1 at ¶ 5.) At most, plaintiff argues in
 14 its opposition brief that its “board members, employees, leadership and advisory council
 15 members, donors, newsletter readers and scholars residing in California have been directly
 16 harmed by the [Department’s] actions, *requiring significant redeployment of [plaintiff] resources*
 17 *and personally subjecting them to the emotional and spiritous injuries of [the Department’s] gross*
 18 *mischaracterization of Hindu teachers.*” (Doc. No. 15 at 11) (emphasis added). These assertions
 19 are not alleged in plaintiff’s complaint, and in any event, are entirely conclusory. *See Our Watch*
 20 *With Tim Thompson, v. Bonta*, ___ F. Supp.3d ___, 2023 WL 4600117, at *6 (E.D. Cal. July 18,
 21 2023) (dismissing a complaint for lack of standing where the plaintiff-organization challenging
 22 the constitutionality of a state law failed to allege “what plaintiff’s regular activities are and how
 23 [the state law’s] enactment specifically impacts the organization’s functions”). Thus, plaintiff’s
 24 attempt to invoke an alternative theory of standing through its opposition brief is unavailing.⁸

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26 ⁸ If plaintiff intends to pursue this theory of standing in a first amended complaint, it is directed
 27 to review this court’s decision in *Our Watch With Tim Thompson*, 2023 WL 4600117, at *5–10,
 28 in which the undersigned addressed the law governing a plaintiff-organization’s direct standing to
 bring suit in some detail.

1 Accordingly, defendant's motion to dismiss the complaint for failure to allege Article III
2 standing predicated on plaintiff's direct standing will also be granted.

3 Because the court concludes that plaintiff lacks Article III standing to bring this action and
4 that defendant's motion to dismiss pursuant to Rule 12(b)(1) must be granted, the court need not
5 reach defendant's arguments in support of his motion to dismiss pursuant to Rule 12(b)(6).
6 Accordingly, defendant's motion to dismiss pursuant to Rule 12(b)(6) will be denied as having
7 been rendered moot by this order.

8 **B. Leave to Amend**

9 Plaintiff has indicated that it desires leave to file a first amended complaint in the event
10 that the court grants defendant's motion to dismiss. (Doc. No. 15 at 10 fn.2 & 16 n.3.) "Courts
11 are free to grant a party leave to amend whenever 'justice so requires,' and requests for leave
12 should be granted with 'extreme liberality.'" *Moss v. U.S. Secret Serv.*, 572 F.3d 962, 972 (9th
13 Cir. 2009) (citations omitted). There are several factors a district court considers in determining
14 whether to grant leave to amend, including undue delay, the movant's bad faith or dilatory
15 motive, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice
16 to the opposing party, and futility. *Brown v. Stored Value Cards, Inc.*, 953 F.3d 567, 574 (9th
17 Cir. 2020) (citing *Foman v. Davis*, 371 U.S. 178, 182 (1962)).

18 Although the court is somewhat skeptical that plaintiff will be able to remedy all of the
19 pleading deficiencies described in this order, plaintiff has not yet had any opportunity to amend
20 its complaint. Defendant—though he opposes leave to amend—has also not asserted that he
21 would be unduly prejudiced by granting plaintiff leave to file a first amended complaint. (Doc.
22 No. 18 at 14–15.) Rather, in his reply brief, defendant contends that permitting amendment
23 would be futile, arguing that "'a citizen lacks standing to contest the policies of the prosecuting
24 authority when he himself is neither prosecuted nor threatened with prosecution' because he
25 'lacks a judicially cognizable interest in the prosecution or non-prosecution of another.'" (*Id.* at
26 15) (quoting *Linda R.S. v. Richard D.*, 410 U.S. 614, 619 (1973)). However, plaintiff has not had
27 an opportunity to fully respond to this argument advanced by defendant and it is unclear whether
28 the decision in *Linda R.S.* has applicability to the claims asserted by plaintiff in this case. For

these reasons, the court will grant plaintiff leave to amend. *See Nat'l Council of La Raza v. Cegavske*, 800 F.3d 1032, 1041 (9th Cir. 2015) ("It is black-letter law that a district court must give plaintiffs at least one chance to amend a deficient complaint, absent a clear showing that amendment would be futile.").

CONCLUSION

For the reasons stated above:

1. Defendant's and plaintiff's requests for judicial notice (Doc. No. 10, 16) are granted;
2. Defendant's motion to dismiss plaintiff's complaint due to plaintiff's lack of Article III standing (Doc. No. 8) is granted, with leave to amend;
3. The remainder of defendant's motion to dismiss (Doc. No. 8) is denied as having been rendered moot by this order;
4. Plaintiff shall file its first amended complaint, or alternatively, a notice of its intent not to do so, within twenty-one (21) days from the date of entry of this order; and
5. Plaintiff is warned that its failure to comply with this order may result in dismissal of this action due to plaintiff's failure to prosecute.

IT IS SO ORDERED.

Dated: August 30, 2023


UNITED STATES DISTRICT JUDGE